

EXHIBIT

1

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION

v.

U.S. DEPARTMENT OF
AGRICULTURE, et al.,

:

:

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: Case No.

: 2:2020cv00041

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:

:

Monday, April 25, 2022

30(b)(6) Zoom Videoconference
deposition of JOHN KLEIN, taken with the witness
participating from his residence, beginning at
9:38 a.m., Eastern Standard Time, before Ryan K.
Black, a Registered Professional Reporter,
Certified Livenote Reporter and Notary Public.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 THE CENTER FOR INDIVIDUAL RIGHTS</p> <p>4 BY: MICHAEL E. ROSMAN, ESQ. - Via Zoom</p> <p>5 MICHELLE A. SCOTT, ESQ. - Via Zoom</p> <p>6 1100 Connecticut Ave., N.W.</p> <p>7 Suite 625</p> <p>8 Washington, DC 20036</p> <p>9 202.833.8400</p> <p>10 rosmann@cir-usa.org</p> <p>11 scott@cir-usa.org</p> <p>12 Representing - Ultima Services Corporation</p> <p>13 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>14 CIVIL RIGHTS DIVISION</p> <p>15 BY: K'SHAANI SMITH, ESQ. - Via Zoom</p> <p>16 950 Pennsylvania Avenue NW</p> <p>17 Washington, DC 20530</p> <p>18 k'shaani.smith@usdoj.gov</p> <p>19</p> <p>20 - and -</p> <p>21</p> <p>22 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>23 CIVIL RIGHTS DIVISION</p> <p>24 BY: JULIET GRAY, ESQ. - Via Zoom</p> <p>25 CHRISTINE DINAN, ESQ. - Via Zoom</p> <p>150 M Street NE</p> <p>Washington, DC 20002</p> <p>juliet.gray@usdoj.gov</p> <p>christine.dinan@usdoj.gov</p> <p>Representing - U.S. Department of Agriculture</p> <p>SMALL BUSINESS ADMINISTRATION</p> <p>BY: DAVID FISHMAN, ESQ. - Via Zoom</p> <p>KAREN HUNTER, ESQ. - Via Zoom</p> <p>409 3rd Street SW</p> <p>Washington, DC 20416</p> <p>800.827.5722</p> <p>david.fishman@sba.gov</p> <p>karen.hunter@sba.gov</p> <p>Representing - Small Business Administration</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX (Cont'd)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Klein 9 a document Bates Numbered US104099</p> <p>4 through US104103.....144</p> <p>5 Klein 10 a document Bates Numbered US0104107</p> <p>6 through US0104108.....145</p> <p>7 Klein 11 a document Bates Numbered US0063188</p> <p>8 through US0063190.....151</p> <p>9 Klein 12 a document Bates Numbered US0063899</p> <p>10 through US0063905.....151</p> <p>11 Klein 13 a document Bates Numbered US0062817</p> <p>12 through US0062818.....155</p> <p>13 Klein 14 a document Bates Numbered US0052929</p> <p>14 through US0052938.....155</p> <p>15 Klein 15 a document Bates Numbered US0054376</p> <p>16 through US0054378.....163</p> <p>17 Klein 16 a document Bates Numbered US0054351</p> <p>18 through US0054352.....166</p> <p>19 Klein 17 a document Bates Numbered US0063192</p> <p>20 through US0063194.....168</p> <p>21 Klein 18 a document Bates Numbered US0114698</p> <p>22 through US0114701.....171</p> <p>23 Klein 19 a document Bates Numbered US0063336</p> <p>24 through US0063339.....172</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 TESTIMONY OF: JOHN KLEIN PAGE</p> <p>3 By Mr. Rosman.....6, 211</p> <p>4 By Ms. Smith.....206</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 Klein 1 a document Bates Numbered US0050764</p> <p>9 through US0050774.....26</p> <p>10 Klein 2 a document Bates Numbered US0071620</p> <p>11 through US0071621.....37</p> <p>12 Klein 3 a document titled Federal Register,</p> <p>13 dated Thursday, October 12, 2002,</p> <p>14 Executive Order 13170 - Increasing</p> <p>15 Access and Opportunities for</p> <p>16 Disadvantaged Businesses.....41</p> <p>17 Klein 4 a document titled Form 1010, 8(a)</p> <p>18 Application.....61</p> <p>19 Klein 5 a document titled Form 1010-IND.....61</p> <p>20 Klein 6 a document Bates Numbered US0051094</p> <p>21 through US0051215.....122</p> <p>22 Klein 7 a document Bates Numbered US0050780</p> <p>23 through US0050923.....122</p> <p>24 Klein 8 a document Bates Numbered US0050948</p> <p>25 through US0050970.....122</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX (Cont'd)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Klein 20 Incorrectly marked.....173</p> <p>4 Klein 21 a document Bates Numbered US063333</p> <p>5 through US063335.....173</p> <p>6 Klein 22 a document Bates Numbered US0052868</p> <p>7 through US0052870.....176</p> <p>8 Klein 23 a document Bates Numbered US0063537</p> <p>9 through US0063538.....177</p> <p>10 Klein 24 a document Bates Numbered US0052943</p> <p>11 through US0052945.....181</p> <p>12 Klein 25 Incorrectly marked.....181</p> <p>13 Klein 26 a document Bates Numbered US0053299</p> <p>14 through US0053300.....181</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. ROSMAN: Why don't we take 10</p> <p>2 minutes at this time.</p> <p>3 MS. SMITH: Okay.</p> <p>4 (Recess taken -- 10:52 a.m.)</p> <p>5 (Resume testimony -- 11:03 a.m.)</p> <p>6 BY MR. ROSMAN:</p> <p>7 Q. I think we discussed previously that</p> <p>8 there's a small business goal of 23 percent.</p> <p>9 Agencies can reserve contracts for small</p> <p>10 businesses, right?</p> <p>11 A. Yes.</p> <p>12 Q. And how does a company become eligible</p> <p>13 to bid on a contract that is reserved for small</p> <p>14 businesses.</p> <p>15 A. Well, normally, we call them a</p> <p>16 set-aside. So if it's a small business</p> <p>17 set-aside, which is set-aside for small</p> <p>18 businesses, then you self-certify that you are,</p> <p>19 in fact, a small business. You know, just like</p> <p>20 we said before, you're self-certifying for SDB</p> <p>21 status, you're also certifying for small status</p> <p>22 for a small business set-aside.</p> <p>23 And in both of those cases, you know,</p> <p>24 the firm is certifying their status under penalty</p> <p>25 of perjury, so we accept those certifications</p>	<p style="text-align: right;">Page 60</p> <p>1 that company wins a contract that was reserved</p> <p>2 for small businesses, right?</p> <p>3 A. SBA does not check it themselves.</p> <p>4 That's correct.</p> <p>5 In terms of submitting an offer for a</p> <p>6 contract, the contracting officer will accept</p> <p>7 that certification as accurate, unless he or she</p> <p>8 has reason to believe otherwise. And he or she</p> <p>9 or an interested party who also submitted an</p> <p>10 offer and was not the primary successful offeror</p> <p>11 can always challenge that status with SBA.</p> <p>12 Q. Okay. Let's turn to the 8(a) Business</p> <p>13 Development Program. How does one go about</p> <p>14 applying to be a participant in that program?</p> <p>15 A. So today everything is done online</p> <p>16 through the Certify.gov system.</p> <p>17 MR. ROSMAN: Okay. Michelle, could you</p> <p>18 put Form 1010 into Exhibit Share?</p> <p>19 THE WITNESS: Which 1010?</p> <p>20 MR. ROSMAN: This is the first 1010.</p> <p>21 And then, Michelle, if you could put</p> <p>22 1010-IND also in Exhibit Share after that, we'll</p> <p>23 go through things, hopefully, with some</p> <p>24 expedition.</p> <p>25 MR. FISHMAN: We're all for that.</p>
<p style="text-align: right;">Page 59</p> <p>1 absent information to the contrary.</p> <p>2 And on the small business size status</p> <p>3 part of it, you know, some of the affiliation</p> <p>4 rules can be complex and confusing. So the mere</p> <p>5 fact that someone is certifying as small does not</p> <p>6 necessarily mean that they did something,</p> <p>7 you know, wrong, per se; they just, maybe,</p> <p>8 misunderstand the rules. So, yes, they do it</p> <p>9 under the penalty of perjury, but on the science</p> <p>10 part, many times it's more confusion than it is</p> <p>11 an outright miscertification.</p> <p>12 Q. Okay. So is it like the SDB in that</p> <p>13 they just identify themselves as small in, say, a</p> <p>14 SAM registration?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay.</p> <p>17 A. And they do it based upon a certain size</p> <p>18 standard. So I can register small, or Code 1, 2,</p> <p>19 3, 4, 5, 6, or I'm other than small, Code 1, 2,</p> <p>20 3, 4, 5, 6, 7. Because, you know, one's \$3.5</p> <p>21 million size standard, and one's a \$35 million</p> <p>22 size standard. I'm eligible for one</p> <p>23 but not for the other.</p> <p>24 Q. Got it. Okay.</p> <p>25 And the SBA doesn't check that until</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. ROSMAN: Good. Me too.</p> <p>2 When you you've got the first one there,</p> <p>3 just let us know.</p> <p>4 THE WITNESS: I still just have 1, 2 and</p> <p>5 3 only right now.</p> <p>6 MR. ROSMAN: Me too.</p> <p>7 MS. SCOTT: Four should be on its way.</p> <p>8 MR. ROSMAN: On its way.</p> <p>9 Okay.</p> <p>10 (Klein Exhibit No. 4, a document titled</p> <p>11 Form 1010, 8(a) Application, was introduced</p> <p>12 electronically.)</p> <p>13 THE WITNESS: There it is. All right.</p> <p>14 BY MR. ROSMAN:</p> <p>15 Q. If you could open up -- now it's telling</p> <p>16 me to wait.</p> <p>17 A. It's telling me to wait, as well.</p> <p>18 Q. All right.</p> <p>19 Let's try it again.</p> <p>20 It still says wait.</p> <p>21 MS. SCOTT: Five should be there pretty</p> <p>22 soon now. It's on its way.</p> <p>23 (Klein Exhibit No. 5, a document titled</p> <p>24 Form 1010-IND, was introduced electronically.)</p> <p>25 MR. ROSMAN: All right. Well, we're</p>

<p style="text-align: right;">Page 122</p> <p>1 MR. ROSMAN: Okay. All right. 2 (Klein Exhibit No. 6, a document Bates 3 Numbered US0051094 through US0051215, was 4 introduced electronically.) 5 (Klein Exhibit No. 7, a document Bates 6 Numbered US0050780 through US0050923, was 7 introduced electronically.) 8 (Klein Exhibit No. 8, a document Bates 9 Numbered US0050948 through US0050970, was 10 introduced electronically.) 11 BY MR. ROSMAN: 12 Q. So, Mr. Klein, my question is, I didn't 13 include all of the appendices to this document, 14 but is this a document you recognize as the 15 Fiscal Year 2015 408 report? 16 A. I haven't opened seven yet. 17 Q. Okay. 18 A. It takes a while. 19 Okay. Seven. Okay. It looks like the 20 408 report, yes. 21 Q. Okay. If we can just turn to the page 22 marked 12, which is, I think, actually, the 14th 23 -- 15th page of the document, but it says 12 at 24 the bottom. 25 MS. SCOTT: I'm sorry, Michael. Are you</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Okay. And just so we're going back to 2 the testimony that you said previously, that 3 would mean the vast majority of people who 4 finished the program in 2014 did not meet the 5 objectives of their business plan, right? 6 A. I don't necessarily think that's true. 7 I think people are -- when it says this, I'm 8 thinking it's early graduation, is my guess, 9 only because when firms are leaving the program, 10 sometimes they do an analysis of the business 11 plan and sometimes they do not. So I don't think 12 it's fair to say that 868 firms did not meet 13 their plan. I don't think that's fair. I think 14 that two firms probably graduated early and SBA 15 didn't necessarily do a full analysis of every 16 other firm coming through or not coming through. 17 Q. Well, how would you know that to be 18 true? 19 A. Based upon this table, you probably 20 would not know that. 21 Q. Okay. And the term "graduated" 22 indicates that it includes both those firms that 23 left the program early and those programs that 24 left the program after nine years, right? 25 A. In theory, yes.</p>
<p style="text-align: right;">Page 123</p> <p>1 on Exhibit 6 or 7? 2 MR. ROSMAN: Six, right, Michelle? 3 THE WITNESS: Oh, I'm on 7. I thought 4 you said 7. I'm sorry. 5 MR. ROSMAN: I said 7 at first, and then 6 I corrected myself. 7 MS. SCOTT: Yeah. It should be 6, 7 and 8 8, Michael. Sorry. 9 MR. ROSMAN: Okay. 10 THE WITNESS: Okay. Page Number 12? 11 BY MR. ROSMAN: 12 Q. It says 12 at the bottom. There's a 13 Table 3 at the top. That's what I'm going to ask 14 you about. 15 A. Okay. 16 Q. So in Table 3, we have identity of 17 those who reached various actions in the program, 18 right? 19 A. Okay. 20 Q. Okay. And if I'm reading this 21 correctly, it indicates that in, for example, 22 fiscal year 2014, 870 participants completed the 23 program, but only two either graduated or early 24 graduated; is that right? 25 A. That's what it says.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Well, do you have some reason -- well, I 2 guess you've described some reasons you have to 3 doubt the accuracy of this, correct? 4 A. I just don't believe that the BOSs, on a 5 case-by-case basis for every firm leaving the 6 program, have compared every one. Many 7 firms -- as I said before, many BOS, Business 8 Opportunity Specialists, have many firms that 9 they're following and they're doing work with. 10 When one leaves the program, it leaves the 11 program, and they're on to the next firm. 12 They're not really looking at why they left the 13 program, how they left the program. Could they 14 do that if they have time? Yes, they could. But 15 many of them don't have the time to do that. So 16 I'm doubting that number in terms of two only. 17 Q. Okay. Well, let me ask you this: Why 18 would the SBA in its report to Congress bother 19 separating out those who completed the program 20 and those who graduated from the program, if, in 21 fact, they don't have faith in the numbers that 22 they're putting down? 23 A. Again, I think they really meant early 24 graduation, but I don't know for -- I can't say, 25 specifically, if that's the case, but that's just</p>

<p style="text-align: right;">Page 126</p> <p>1 my gut on that.</p> <p>2 Q. Okay. Well, your gut tells you that</p> <p>3 they shouldn't have put "graduated" in a table</p> <p>4 that was going to Congress?</p> <p>5 A. No. It's --</p> <p>6 MS. SMITH: Objection.</p> <p>7 THE WITNESS: It's telling me that they,</p> <p>8 maybe, were imprecise in their words; that they</p> <p>9 meant early graduated and they put both there.</p> <p>10 It was certainly no intent by SBA to misconstrue</p> <p>11 anything or mislabel anything. It was more of,</p> <p>12 it looks to me, as an imprecise wording.</p> <p>13 BY MR. ROSMAN:</p> <p>14 Q. All right. Well, is there any other</p> <p>15 basis for determining how many firms at the end</p> <p>16 of nine years have graduated by meeting the</p> <p>17 objectives of their business plan?</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Okay. Does the SBA keep track of that?</p> <p>20 A. I think it's done by some offices, but</p> <p>21 not by others. Again, as I said, many offices</p> <p>22 are overworked and do not have the ability to</p> <p>23 track who's leaving based upon how they're</p> <p>24 leaving. They're just doing other things at that</p> <p>25 point in time.</p>	<p style="text-align: right;">Page 128</p> <p>1 early graduation, yes.</p> <p>2 Q. Okay. And what is that process?</p> <p>3 A. SBA will propose early graduation, and</p> <p>4 the firm can respond to that as to why they</p> <p>5 should or should not be early graduated.</p> <p>6 Q. Okay. So it's just --</p> <p>7 A. If they agree, obviously, then they'll</p> <p>8 go the faster route and do the voluntary early</p> <p>9 graduation. If they don't agree, it can end up</p> <p>10 in the Office of Hearings and Appeals.</p> <p>11 Q. Okay. So in any given year, how many</p> <p>12 early graduations are there?</p> <p>13 A. As you can see from this table, not that</p> <p>14 many.</p> <p>15 Q. Okay. Well, that table, at least</p> <p>16 nominally, says both graduations and early</p> <p>17 graduations. Are you familiar with the number of</p> <p>18 early graduations there have been in more recent</p> <p>19 years?</p> <p>20 A. I would believe that the number is</p> <p>21 similar to these numbers.</p> <p>22 Q. Okay. So fairly few; is that right?</p> <p>23 A. Fairly few, yes.</p> <p>24 Q. Okay. So there are various reasons</p> <p>25 why one can have early graduation that were</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. So who usually initiates early</p> <p>2 graduation, the participant or the SBA?</p> <p>3 A. The SBA.</p> <p>4 Q. Is the process the same regardless of</p> <p>5 which one of them initiates early graduation?</p> <p>6 A. I'm not understanding that question.</p> <p>7 "Is the process the same regardless of which one</p> <p>8 of them." Which one of whom?</p> <p>9 Q. The SBA or the participant.</p> <p>10 A. If the -- if the -- if the participant</p> <p>11 wants to initiate early graduation, it would do</p> <p>12 something under what we call voluntarily early</p> <p>13 graduate. And they would say, we've met our</p> <p>14 program goals, we would like to get out of the</p> <p>15 program, and that's the end of it. There's no</p> <p>16 process, per se, other than -- we call it a</p> <p>17 voluntary withdrawal, if they just want to get</p> <p>18 out of the program generally, or a voluntary</p> <p>19 early graduation if they believe that they've</p> <p>20 met their objective.</p> <p>21 Q. Okay. Well, if the SBA initiates the</p> <p>22 early graduation process, are there procedures</p> <p>23 that are afforded the participant?</p> <p>24 A. There is a process by which the</p> <p>25 participant can respond to SBA's initiation of</p>	<p style="text-align: right;">Page 129</p> <p>1 identified in our notice to the SBA. Is there</p> <p>2 one reason that's more prevalent than others for</p> <p>3 early graduation?</p> <p>4 A. You know, I think -- well, I mean, I've</p> <p>5 seen on all three those, you know, the reasons.</p> <p>6 I've seen a reason for, we think that the firm</p> <p>7 has done so well that the firm achieves its</p> <p>8 business plan. I've seen where the individual</p> <p>9 has overcome economic disadvantage. So both of</p> <p>10 those reasons are reasons that we've done the</p> <p>11 process.</p> <p>12 Q. Okay. Is it ever the case that a</p> <p>13 participant is given early graduation because its</p> <p>14 size has exceeded the size of the primary NAICS</p> <p>15 code?</p> <p>16 A. I don't think that's the normal way of</p> <p>17 doing it.</p> <p>18 Q. Okay.</p> <p>19 A. No, the regulations do not require a</p> <p>20 firm to be early graduated when that happens.</p> <p>21 The reg in SBA say, "May early graduate." It</p> <p>22 doesn't say they "must."</p> <p>23 Q. Well, I understand. I'm not sure</p> <p>24 -- okay.</p> <p>25 So that's not a common means by which</p>

ERRATA

1

2 PAGE LINE CHANGE

3 P. 11; Line 24; insert the word "the" between the words "to" and "8(a)" -----

4 Reason for

5 Change: Typo

6 PAGE LINE CHANGE

7 P. 13; Line 12 and Line 13; change the word "cell" to "sub" -----

8 Reason for

9 Change: Typo

10 PAGE LINE CHANGE

11 P. 17; Lines 2-3: insert the word "and" between the words "Management" and "Technical" -----

12 Reason for

13 Change: Typo

14 PAGE LINE CHANGE

15 P. 21; Lines 17-18; change "of participants in a program, dollars," to "participants in the 8(a) program, contract dollars," -----

16 Reason for

17 Change: Typo; clarity

18 PAGE LINE CHANGE

19 P. 40; Lines 8-9; First sentence should read: "I'm sure there are several agencies whose goals for SDBs are greater than 5 percent." -----

20 Reason for

21 Change: Typos

22 PAGE LINE CHANGE

23 P. 54; Line 14; Change "certified.gov" to "certify.gov" -----

24 Reason for

25 Change: Typo

Veritext Legal Solutions

1 PAGE LINE CHANGE

2 _ P. 59; Lines 9-10; change "but on the science part, many times it's" to "but if something is incorrect, many times it's" -----

3 Reason for

4 Change: Transcription error

5 PAGE LINE CHANGE

6 _ P. 59; Lines 17-20; sentence should read as follows: "And they do it based upon a certain size standard. Each NAICS code is assigned a corresponding size standard. So I can register as a small business for NAICS Code 123456, and as an other than small business for NAICS Code 123457, depending upon the corresponding size standard corresponding to the NAICS Code." -----

7 Reason for

8 Change: Typos and Clarification

9 PAGE LINE CHANGE

10 _ P. 60; Line 10; change the word "primary" to "apparent" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 _ P. 74; Lines 3-4; should read "or they look for things as to whether there are any outstanding debts or things of that sort." -----

15 Reason for

16 Change: Transcription error

17 PAGE LINE CHANGE

18 _ P. 83; Line 7; should read "Alaska", not "Alaskan" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 _ P. 83; Line 9; delete "or it's - -" and add the word "be" between the words "deemed to" and "owned and" -----

23 Reason for

24 Change: Typo

1 PAGE LINE CHANGE

2 P. 87; Line 4; change "the ANC owns X and Joe Smith owns 400 percent of one company" to "the
3 ANC owns 51% of X and Joe Smith owns 49 percent of that company" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 107; Line 22; change "company Y" to "country Y" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 127; Line 13; change the word "graduate" to "graduation" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 138; Line 24; Change "SDBO" to "SDVO"; change "SWB" to "WOSB" -----

15 Reason for

16 Change: Typos

17 PAGE LINE CHANGE

18 P. 140; Line 12; change "JCBD" to "GCB" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 P. 140; Line 23; Change "4" to "4.5 million" -----

23 Reason for

24 Change: Typo/clarification

1 PAGE LINE CHANGE

2 P. 153; Line 18; change "an it" to "it an" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 194; Lines 18-19; "7(j) is management technical assistance" should be changed to read "7(j) is a management and technical assistance program" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 195; Line 15; Change "with grants" to "or grants" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 195; Lines 22-23; Change "these contractor grantees" to "these contractors or grantees" ---

15 Reason for

16 Change: Typo

17 PAGE LINE CHANGE

18 P. 199; Line 18; Change "as SBA's" to "of SBA's" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 -----

23 Reason for


24 Change:

ACKNOWLEDGMENT OF DEPONENT

I, John W. Klein, do
 hereby certify that I have read the foregoing
 pages 1 to 212 and that the same is a
 correct transcription of the answers given by
 me to the questions therein propounded,
 except for the corrections or changes in form
 or substance, if any, noted in the attached
 Errata Sheet.

6-10-22

DATE


 SIGNATURE

Subscribed and sworn to before
 me this _____ day of _____, 2022.

My commission expires:

Notary Public